314 US 67
(5)

Office - Supreme Court, U. S.
FILED
JUL 3 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 231.

W. D. GORDON, PETITIONER,

VS.

CECIL E. VALLFE ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

JOEL H. BERRY,
SAM G. CROOM,
C. W. CROOM,
Houston, Texas,
Attorneys for Petitioner.

SUBJECT INDEX

Petition for Writ of Certiorari 1

Summary statement of matter involved 1

Reasons relied on for allowance of writ 3

Prayer for writ 4

Brief in Support of Petition for Writ of Certiorari 5

Opinions of courts below 5

Jurisdiction 6

Statement of the case 6

Assignments of error 7

Argument 9

Table of Cases Cited

Armour vs. Saunders, 292 U. S. 191 8

Bond vs. Hume, 61 L. Ed. 567 12

Erie Ry. Co. vs. Thompkins, 304 U. S. 64 6

Hartford Accident & Insurance Co. vs. Delta Pineland Co., 78 L. Ed. 1178 13

Herrick vs. Minneapolis St. Ry. Co., 31 Minn. 11 12

Loucks vs. Standard Oil Co., 224 N. Y. 99, 120 N. E. 198 9

Lutcher & Moore Lumber Co. vs. Knight, 217 U. S. 257 6

Northern Pacific Rwy. Co. vs. Babcock, 38 L. Ed. 958 12

Northern Pacific Rwy. Co. vs. Babcock, 38 L. Ed. 961 12

Pennoyer vs. Neff, 24 L. Ed. 565 10

Pritchard vs. Union National Bank, 91 U. S. 506, 23 L. Ed. 245 12

Richardson vs. Leavitt, 1 La. Ann. 430 ..... 10, 14

Salem Trust Co. vs. Mfg. Finance Co., 68 L. Ed. 634 10

Saunders vs. Armour Fertilizer Works, 292 U. S. 190, 78 L. Ed. 1206 ..... 4, 10, 11

Willing vs. Binenstock, 302 U. S. 272 6

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

W. D. GORDON, PETITIONER,

VS.

CECIL E. VALLEE ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Supreme Court of the United States:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

To protect himself against paying twice, upon the conflicting claims of garnishors on the one hand, and an assignee on the other, all citizens of Texas, a debt he owed to one Spell, also a citizen of Texas, Helis, a citizen of Louisiana, filed a bill of interpleader, making the conflicting claimants parties, and tendered and paid into court a sum sufficient to cover the conflicting claims. The claim of the garnishers was that as judgment creditors in Texas of Spell they had sued in the civil district

courts of the Parish of Orleans for, and on April 25, 1939, had served on Helis in Louisiana, writs of garnishment in aid of writs of attachment; that on January 22, 1940, subsequent to the rendition in Louisiana of judgments giving full faith and credit to the Texas judgments, orders were entered in the garnishment suits directing Helis to pay to the plaintiffs therein the amounts of such judgments, to-wit, $4,491.91 to Vallee *et al.*, $1,220.93 to Sampson *et al.*, with interest, and that these garnishments, having been run three days before Helis had notice of the assignment to Gordon, primed the assignment. The assignee, admitting that Helis did not have notice of the assignment until the third day after writ of garnishment had been run, insisted that the assignment having been given in Texas by one Texas citizen to another Texas citizen, where notice to the debtor is not necessary to its validity before the garnishment suits had been filed, the assignment must be held to prime the garnishment. Under the Texas law, the assignment to Gordon admittedly would prime the garnishment judgments.

The district judge found that the complainant was a resident of the Parish of Orleans and a citizen of Louisiana, and that all of the defendants were residents of Jefferson County, Texas; that the assignment was executed and delivered to W. D. Gordon in Texas before the garnishments were run, but the garnishments were run on Helis in Louisiana three days before he had notice of the assignment to Gordon. He concluded that the law of Louisiana and not that of Texas ruled the rights of the parties; that under Louisiana law a garnishment run before notice of an assignment primes the assignment and that the garnishment having been run before Helis had notice of the assignment, it and the judgment on it were valid and binding upon him and must be discharged, out of the debt, ahead of the assignment.

Appellant urged that because the creditor and the assignee lived and the assignment was made in Texas the

case is ruled by the law of Texas, which does not require notice of an assignment, rather than by the law of Louisiana which does. Also that the law of Louisiana, while conditioning the validity of an assignment of a debt made in, and by, and to, citizens of Louisiana, upon notice to the debtor, does not hold invalid as against its public policy an assignment validly made without notice in another state by and to a citizen of that state.

The trial court rendered judgment in favor of Cecil E. Vallee *et al.*, creditors, against W. D. Gordon, the assignee. This judgment was sustained by the circuit court of appeals. As a basis for its opinion, the circuit court of appeals, in effect, held that the law of the forum, to-wit, the law of Louisiana, was the proper law under which law the judgments in the garnishment suits primed the assignment to W. D. Gordon, although said assignment was executed and delivered to Gordon in Texas several months prior to the filing of said garnishment proceedings in Louisiana by Texas citizens. The circuit court of appeals further held that the judgment in said garnishment suit was binding on petitioner, W. D. Gordon, even though he was not a party thereto (R. 67).

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

The Honorable Circuit Court of Appeals erred in affirming this case, thereby destroying the prior vested rights of W. D. Gordon to the fund in controversy in violation of amendments five and fourteen to the Constitution of the United States.

II.

The decision of the said circuit court of appeals is erroneous because it holds that the vested rights of petitioner, created by a legal assignment to the fund involved

long prior to the filing of the garnishment suits, could be taken away from petitioner by judgments in said garnishment suits in Louisiana to which he was not a party.

III.

The decision of the said circuit court of appeals is erroneous in holding that the law of the forum is the proper applicable law solely because the garnishment suits and the bill of interpleader were filed therein.

IV.

The decision of the said circuit court of appeals is in direct conflict with the decision of the Supreme Court of the United States in the case of *Armour* v. *Saunders*, 292 U. S. 190, 78 L. Ed. 1206, which holds that the filing of an interpleader suit does not affect the vested rights of claimants.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding said court to certify and send to this court a full and complete transcript of the record and proceedings of the said United States Circuit Court of Appeals made in the case numbered and entitled on this docket "*W. D. Gordon, Appellant,* v. *Cecil E. Vallee et al., Appellees,*" No. 9685, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and the judgment herein of the said United Circuit Court of Appeals, as well as that of the United States District Court for the Eastern District of Louisiana be reversed and rendered or now the alternative that the cause be remanded to the district court for further trial and for such further relief as to this court may seem proper.

W. D. GORDON,
By JOEL H. BERRY,
SAM G. CROOM,
C. W. CROOM,
Attorneys for Petitioner.